IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.371 OF 2006

Anthony Joseph Pattathu.) ... Appellant

Vs.

The Federal Bank Limited) ... Respondent

Mr. R.T. Padwal for the appellant.

Mr. M.U. Pandey for the respondent.

CORAM : A.M. KHANWILKAR, J.

DATED : 8TH JUNE, 2006.

P.C.:-

1. Heard the counsel for the parties. Admit. Mr. Pandey waives service for the respondent. As a short question is involved, appeal is taken up for final disposal. This appeal from order challenges the order passed by the trial court dated 5th May 2006 on Notice of Motion No.1853 of 2006 in S.C. Suit No.2050 of 2006, which reads thus:

> "Heard both the sides on sufficient length of land at the point of ad-interim relief.
>
> Perused the plaint, NM reply affidavit, short reply affidavit.

ORDER

> NM is made r/o. 30.06.2006. Meanwhile ad-interim relief in terms of prayer clause (a) (b) © and (d) till next date.
>
> 2) Advocates Sakharande waives service for NM and Writ of summons.
>
> 3) Plaintiff to get it registered. Adourned to 30th June 2006 for NM reply/Written statement."

2. I have purposely reproduced the entire order. On a plain reading of the order, it is obvious that the trial judge has not recorded any reason much less cogent reasons for grant of ad-interim relief as has been granted. Ad-interim relief in terms of prayer clause (c) has also been granted which, in fact, is a mandatory order. This clearly shows non-application of mind by the trial judge. It is seen that the trial judge has heard the parties at sufficient length on the point of ad-interim relief; if so, it was more than necessary for the trial judge to atleast spell out the points canvassed before him and record his prima facie view to justify the grant of ad-interim order. It is unfathomable that an order which is an appealable order, is passed without recording any reason whatsoever. It is well known that reasons are recorded in the judgment by the subordinate court as that becomes the basis of challenge before the superior court. Moreover, reason is the soul of any judgment or order. The trial judge will be well advised that in future such orders are eschewed. Suffice it to observe that the impugned order cannot be sustained. Hence, the same is set aside. The parties are relegated before the trial judge for reconsideration of grant of ad-interim relief.

3. The plaintiff will be at liberty to move the trial judge for such relief as may be advised within one week from today and if such request is made, the trial judge will proceed to consider the same in accordance with law. All questions are left open. The appellant is directed to maintain status-quo as of today with regard to the suit property for a period of one week from today. Appeal is disposed of in the aforestated terms. No order as to costs.

4. It is made clear that if the pleadings are completed, it will be open to the trial judge to finally decide the main Motion when the same is moved within one week by the parties or proceed to pass necessary orders on the prayer for ad-interim relief as may be advised.

[A.M. KHANWILKAR, J.]